Supreme Court of the United States

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OCTOBER TERM, 1965

No. 692

THE PURE OIL COMPANY,
Petitioner

versus

PASCUAL SUAREZ,
Respondent

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinion Below and Jurisdiction

The District Court rendered no opinion. The opinion of the Court of Appeals is reported at 346 F2d 890. The judgment of the Court of Appeals is dated June 16, 1965, and was entered on the same date. Rehearing was denied on September 7, 1965. Petition for certiorari was filed on October 23, 1965, and certiorari was granted January 17, 1965, ... US ...., 34 US Law Week 3245. Jurisdiction of this Court lies under 28 USC 1254(1).

Statutes Involved

46 USC 688: "Any seaman who shall suffer personal injury in the course of his employment may,

at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. *Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.*" (Emphasis supplied.)

28 USC 1391(c): "A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes."

Question Presented

Whether venue under the Jones Act, 46 USC 688, is limited to "the court of the district in which the defendant employer resides (*i.e.*, is incorporated) or in which his principal office is located", as explicitly provided in the special-venue provision of the Act as construed judicially prior to 1948, and as

held since 1948 by the Third Circuit and several district courts; or whether such venue was extended by the general venue provision [28 USC 1391(c)] of the 1948 revision of the Judicial Code, to include districts in which the employer merely does business, as held by the Fifth Circuit in this case.

Statement of the Case

Petitioner, The Pure Oil Company, is an Ohio corporation, with its principal office in Palatine, Illinois. R 6, 13.

Respondent, a seaman and member of the crew of the S/S *Pure Oil*, having been injured aboard his vessel on the high seas, filed a civil action under the Jones Act against petitioner, his former employer, in the District Court for the Southern District of Florida, a State in which petitioner does business. R 2-3, 7.

Petitioner promptly moved to transfer the action to the district in which it has its principal office, the Northern District of Illinois, Eastern Division. R 5-6.

After hearing argument, the District Court entered an order refusing the transfer on the ground that venue under the Jones Act lies "in any district where the defendant is doing business". R 8.

An interlocutory appeal was granted from the order, which was affirmed by the Court of Appeals. R 10-11, 27.

Summary of Argument

When the Jones Act was passed, Congress deliberately rejected a proposal that venue of actions thereunder would lie in any district in which a corporate defendant is doing business, and provided instead explicitly that venue of such actions is restricted to the district in which a corporate defendant is incorporated or has its principal office.

When the Judicial Code was revised in 1948, to provide that any district in which a corporation is doing business shall be deemed its "residence" for general venue purposes, Congress made no change in the special restrictive-venue provision of the Jones Act.

A policy argument as to considerations deemed to justify a liberalization of the venue provision of the Jones Act should properly be addressed to Congress, not to the courts.

Argument

In 1920, the Senate proposed an amendment to HR 10378 (the Merchant Marine Act) to include a provision (the Jones Act) giving seamen and their representatives a right of action for personal injury and death. The Senate amendment provided that all statutes conferring or regulating the right of action for death in the case of railway employees (the

Federal Employers' Liability Act) should be applicable to seamen's actions. *Senate Report 573,* 66th Cong., 2d Sess., p. 23. The FELA had been amended in 1910 to lay venue of actions thereunder wherever the defendant-employer was doing business. Act of April 5, 1910, c. 43, §1, 36 Stat. 291.

The House accepted the Senate's amendment, but subject to the proviso that the following sentence be added thereto: "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." The Senate acceded to this proviso in conference (*House Reports 1093,* p. 21, *1102,* p. 35, *1107,* pp. 19, 32, 66th Cong., 2d Sess.), and the added sentence is still part of the Jones Act (page 2 *supra*).

The words "reside" and "residence" in federal venue statutes had, until 1948, always referred, in the case of a corporation, to the state of its incorporation. *Suttle vs Reich Bros. Co.,* 333 US 163 (1948), and cases cited therein.

In rejecting inclusion by reference, of the FELA's doing-business venue test, and adding a sentence restricting venue to the district of the defendant's residence or principal office, Congress expressly and clearly limited Jones-Act venue to the district of principal office or incorporation, in the case of a

corporate defendant, as conceded by the Fifth Circuit below (346 F2d at 892, R 16-17).[1]

In 1948, the revision of the Judicial Code expanded the general venue provision thereof by providing that any district in which a corporation is incorporated or licensed to do business, or is doing business, shall be regarded as its residence for venue purposes. 28 USC 1391(c). However, no change was made in the special restrictive-venue provision of the Jones Act.

In *Fourco Glass Co. vs Transmirra Products Corp.*, 353 US 222 (1957), this Court held that the 1948 expansion of the general venue provision of the Judicial Code, did not change the special provision of that Code restricting venue in patent suits to the district of incorporation of corporate defendants.[2]

[1] "Prior to 1948—and indeed, at the time Congress enacted the Jones Act in 1920—the general venue statute was geared to the residence of either the defendant or, in diversity cases, the plaintiff as well. The residence of a corporation was uniformly restricted to the State of its incorporation, even in Jones Act suits." 346 F2d at 893, R 19. And see *Leith vs Oil Transport Co.*, 321 F2d 591 (CA 3-1963); *Smith vs Nicholson Universal SS Co.*, 42 FS 1001 (WD NY-1941); *Burris vs Matson Nav. Co.*, 37 FS 648 (SD NY-1940); *Stein vs Standard Oil Co.*, 36 F2d 258 (SD NY-1929); *Peters vs Detroit & Cleveland Nav. Co.*, 24 F2d 454 (WD NY-1927); *Caceres vs US Shipping Board Emergency Fleet Corp.*, 299 Fed. 968 (ED NY-1924); *Leon vs US Shipping Board Emergency Fleet Corp.*, 286 Fed. 681 (SD NY-1921).

[2] In *Bulova Watch Co. vs United States*, 365 US 753 (1961), this Court similarly held that the general provisions of the 1948 revision of the Judicial Code as to interest on judgments, do not override the specific provision of the Internal Revenue Code as to interest on tax-refund judgments, especially since the Congressional history of the Revenue-Code provision, like that of the Jones Act, reveals Congressional rejection of the rule later embodied in the 1948 revision.

This conclusion was reached despite the fact that, as part of the 1948 revision of the Judicial Code, the patent-venue provision of that Code was changed to refer to the district where the defendant "resides" (instead of the district of which the "defendant is an inhabitant"), by the same Act which expanded the definition of corporate residence in section 1391(c) of the Judicial Code to include districts in which the corporation is licensed to do, or is doing, business. This Court reasoned that no changes of law or policy were made by the 1948 revision "unless an intent to make such changes is clearly expressed". 353 US at 227.[3]

The *Fourco* conclusion is applicable *a fortiori* to the Jones Act's special venue provision, which, with other special venue provisions in other statutes, was deliberately left unchanged when the Judicial Code was revised. To hold, as the Fifth Circuit has done in this case, that the expanded definition of corporate residence in section 1391(c) of the Judicial Code is to be read into the word "resides" in the Jones-Act venue provision, would do more than merely modify the meaning of a word in that provision. It would repeal the entire restrictive-venue provision carefully included in the Jones Act by Congress in 1920, leaving corporate venue to be governed by the broad

[3] One of the Court-of-Appeals decisions disapproved by this Court in *Fourco* was *Dalton vs Shakespeare Co.*, 196 F2d 469 (1952), in which the Fifth Circuit made the same expanded-venue holding as to patent cases, that it made in the case at bar as to Jones-Act suits. See 353 US at 224, footnote 3.

doing-business test of the FELA, as once proposed in, but ultimately rejected by, Congress.[4]

Any such construction of the 1948 revision is thus precluded by the rule against implied repeal of statutory provisions, *Mercantile National Bank vs Langdeau,* 371 US 555, 565 (1963), as well as by the principle that "where the purpose of a special (venue) rule is to limit rights, a sound basis exists for stating that the more general provision is inapplicable". Comment, *Venue in Private Antitrust Suits,* 37 NYU Law Review 268, 274 (1962); and see *Missouri vs Ross,* 299 US 72, 76 (1936).

Since the *Fourco* decision, all courts (except the Fifth Circuit) which have considered its application, have held that the general expanded-venue provision of section 1391(c) has no application to the unchanged special-venue provisions of the Jones Act[5] and other statutes,[6] as have the leading text-writers on federal

[4] As noted above, Congress amended the FELA in 1910 to extend venue of actions thereunder to any district in which the defendant is doing business (Act of April 5, 1910, c. 143, §1, 36 Stat. 291); but Congress has made no such change in the venue provision of the Jones Act.

[5] *Leith vs Oil Transport Co.,* 321 F2d 591 (CA 3-1963); *Barnes vs E. J. Platt Fisheries,* 237 FS 390 (ND Miss.-1964); *Rodriquez vs United Fruit Co.,* 236 FS 680 (ED Va.-1964); *Blanco vs Gulf Coast Transp.,* 235 FS 197 (WD La.-1964). *Cf. Connolly vs Farrell Lines,* 268 F2d 653 (CA 1-1959), cert. den., 361 US 902; *Hutchison vs Pacific-Atlantic SS Co.,* 217 F2d 384 (CA 9-1954); *Garland vs Alaska SS Co.,* 194 FS 792 (DC Alaska-1961).

[6] *Roberts Bros. vs Kurtz Bros.,* 231 FS 163 (DC NJ-1964) (Clayton-Act suits); *Zonolite Co. vs United States,* 209 FS 597 (WD Pa.-1962) (suits to enforce or set aside ICC orders); *R. J. Coulter Funeral Home vs National Burial Ins. Co.,* 192 FS 522 (ED Tenn.-1960) (Clayton-Act suits); *Kaeppler vs James H. Matthews & Co.,* 180 FS 691 (ED Pa.-1960) (Clayton-Act suits); *United Transit Co. vs United States,* 158 FS 856 (MD Tenn.-1957) (tax-refund suits).

practice. 1 *Moore's Federal Practice* (2d ed.) 1602, 1652, ¶ ¶ 0.144[1], 0.144[13.-4]; 1 Barron and Holtzoff, *Federal Practice and Procedure* (1960) 387.

The single criticism[7] of application of *Fourco* to Jones-Act cases has been based, as in the Fifth Circuit's opinion herein, mainly on grounds of policy which, "however appealing, are addressed to an inappropriate forum, and . . . ought to be made to the Congress and not to the Courts". *United Steelworkers vs Bouligny*, 382 US ...., 34 US Law Week 4019, 4021 (1965).

If presented with such a policy argument, and with such countervailing considerations as arise from forum shopping and docket congestion in metropolitan centers, Congress might well make no change in the restricted venue provision of the Jones Act, or it might perhaps make some change therein other than full-scale adoption of the rule of section 1391(c). The decision is, in any event, one for Congress, and not for the courts.

[7] Note, 62 Michigan Law Review 897 (1964).

Conclusion

It is respectfully submitted that the judgment below should be reversed, and the cause remanded to the District Court for transfer.

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